

SEP 18 1971 - 10 42 AM

ASSIGNMENT OF LESSOR'S INTEREST IN LEASE

INTERSTATE COMMERCE COMMISSION

THIS ASSIGNMENT, made this 17th day of September, 1969, by Transerv Systems, Inc., a Delaware corporation, (herein called "Assignor") to Lutheran Brotherhood of Minneapolis, a Minnesota non-profit corporation, (herein called "Assignee"),

W I T N E S S E T H

FOR VALUE RECEIVED, Assignor hereby grants, transfers, and assigns to Assignee all of the right, title and interest of Assignor and moneys due or to become due in that certain lease of the second day of May, 1969, between Essex Industries, Inc., as Lessor, and Skelly Oil Company, as Lessee, said lease having been assigned by Essex Industries, Inc. to Transerv Systems, Inc., effective September 2, 1969, and pertaining to the property described in Exhibit "A" attached hereto and made a part hereof.

This Assignment is made for the purpose of securing a certain Promissory Note (including any extensions or renewals thereof) of even date herewith in the principal sum of Six Hundred Thousand Dollars (\$600,000.00) made by Assignor herein, which note is payable to Assignee herein; and for the further purpose of securing all obligations and covenants in the Security Agreement concerning the above described equipment which was also given as security for said Note.

A. TO PROTECT THE SECURITY OF THIS ASSIGNMENT ASSIGNOR AGREES:

1. To faithfully abide by, perform and discharge each and every obligation, covenant and agreement of said lease by Lessor to be performed; at the sole cost and expense of Assignor, to enforce or secure the performance of each and every obligation, covenant, condition and agreement of said lease by the Lessee to be performed; not to anticipate the rents thereunder, or to waive, excuse, condone or in any manner release or discharge the Lessee thereunder of or from the obligations, covenants, conditions and agreements by said Lessee to be performed, including the obligation to pay the rental called for thereunder in the manner and at the place and time specified therein.

2. At Assignor's sole cost and expense to appear in and defend any action or proceeding arising under, growing out of or in any manner connected with the said lease or the obligations, duties or liabilities of Lessor and Lessee thereunder, and to pay all costs and expenses of the Assignee, including attorney's fees in a reasonable sum in any such action or proceeding in which the Assignee may appear.

3. That should the Assignor fail to make any payment or to do any act as herein provided, then the Assignee, but without obligation so to do, and without releasing Assignor from any obligation hereof, may, after written notice of such default, make or do the same in such manner and to such extent as the Assignee may deem necessary to protect the security hereof, including specifically, without limiting its general powers, the right to appear in and defend any action or proceeding purporting to affect the security hereof or the rights or powers of the Assignee, and also the right to perform and discharge each and every obligation, covenant and agreement of Assignor in said lease contained; and in exercising any such powers to pay necessary costs and expenses, employ counsel and incur and pay reasonable attorney's fees.

4. To pay immediately upon demand all sums expended by the Assignee under the authority hereof.

B. IT IS MUTUALLY AGREED THAT:

1. So long as there shall exist no default by Assignor in the payment of any indebtedness secured hereby or in the performance of any obligation, covenant or agreement herein or in said Security Agreement or lease contained, Assignor shall have the right to receive rental payments under the lease with Skelly Oil Company of the equipment in which Assignee holds a security interest.

2. Upon or at any time after default by Assignor, and a reasonable time after notice thereof to Assignor, the Assignee may declare all sums secured hereby immediately due and payable, and may at its option, and without regard to the adequacy of security for the indebtedness hereby secured, either in person or by agent with or without bringing any action or proceedings, or by a receiver to be appointed by a court, enter upon, take possession of, manage and operate said leased equipment or any part thereof; make, cancel, enforce or modify leases; and fix or modify rents, and do any acts which the Assignee deems proper to protect the security hereof, and either with or without taking possession of said property, in its own name sue for or otherwise collect and receive, such rents issues and profits, including those past due and unpaid, and apply the same, less reasonable costs and expenses of operation and collection, including reasonable attorney's fees, upon any indebtedness secured hereby, and in such order as the Assignee may determine. The entering upon and taking possession of said equipment, the collection of such rents, issues and profits and the application thereof as aforesaid, shall not cure or waive any default under this or any other agreement between Assignor and Assignee.

3. The Assignee shall not be obligated to perform or discharge, nor does it hereby undertake to perform or discharge, any obligation, duty or liability under said lease, or under or by reason of this assignment, and Assignor shall and does hereby agree to indemnify and to hold the Assignee harmless of and from any and all liability, loss or damage which it may or might incur under said lease or under or by reason of this Assignment and of and from any and all claims and demands whatsoever which may be asserted against it by reason of any alleged obligations or undertaking on its part to perform or discharge any of the terms, covenants or agreements contained in said lease; should the Assignee incur any such liability, loss or damage under said lease or under or by reason of this Assignment, or in the defense of any such claims or demands, the amount thereof, including costs, expenses and reasonable attorney's fees shall be secured hereby, and Assignor shall reimburse the Assignee therefore immediately upon demand, and upon the failure of Assignor so to do the Assignee may declare all sums hereby immediately due and payable.

4. Upon the payment in full of all indebtedness secured hereby, this Assignment shall become and be void and of no effect but the affidavit of any officer or loan supervisor of the Assignee showing any part of said indebtedness to remain unpaid shall be and constitute conclusive evidence of the validity, effectiveness, and continuing force of this Assignment, and any person may and is hereby authorized to rely thereon.

5. This assignment applies to, inures to the benefit of, and binds all parties hereto, their respective successors and assigns. The term "lease" as used herein means the lease

herēby assigned or any extension or renewal thereof or any lease subsequently executed by Assignor covering the equipment above described or any part thereof.

IN WITNESS WHEREOF, TRANSERV SYSTEMS, INC., has caused these presents to be executed in its corporate name by its Chairman and its corporate seal to be hereunto affixed the day and year first above written.

In presence of:

TRANSERV SYSTEMS, INC.

BY

Its

STATE OF MINNESOTA)
) SS.
COUNTY OF HENNEPIN)

On this 17th day of September, 1969, before me, a Notary Public within and for said County, personally appeared Paul W. Siege to me personally known, who, being by me duly sworn, did say that he is the Chairman of Transerv Systems, Inc., one of the corporations named in the foregoing instrument; that the seal affixed to said instrument is the corporate seal of said corporation; that said instrument was signed and sealed in behalf of said corporation by authority of its Board of Directors and said Paul W. Siege acknowledged said instrument to be the free act and deed of said corporation.

Donald C. Nelson

DONALD C. NELSON
Notary Public, Hennepin County, Minn.
My Commission Expires 12/31/71

E X H I B I T A

Complete description of equipment to be leased to Skelly Oil Company and in which equipment Lutheran Brotherhood, as Secured Party, has a security interest under Security Agreement and Promissory Note of the 17th day of September, 1969, as follows:

Class DOT 112-A-340-W
Tank Cars
Initialed & Numbered
TSVX 3300 - 3334

Also described with serial numbers as follows:

112A340W
18-141-65-1

112A340W
18-141-65-2

ETC. Through 35.

I, Thomas C. Newkirk, a Notary Public of the State of New York, hereby certify that I have examined the attached photocopy of the Assignment dated September 17, 1969 running from Transerv Systems, Inc. to Lutheran Brotherhood of Minneapolis; that I have compared the same with the original thereof; and that the attached photocopy is a true, exact and complete copy of the original of the said Assignment.

Dated: New York, New York
September 13, 1971

Thomas C. Newkirk

THOMAS C. NEWKIRK
Notary Public, State of New York
No. 31-2877825
Qualified in New York County
Commission Expires March 30, 1973



ESSEX INDUSTRIES, INC.

CAR SERVICE CONTRACT
NO. 123

THIS AGREEMENT, dated this 2nd day of May, 1969, by and between ESSEX INDUSTRIES, INC., hereinafter referred to as "Lessor", and SKELLY OIL COMPANY, hereinafter referred to as "Lessee",

WITNESSETH:

1. Lessor agrees to furnish to Lessee and Lessee agrees to accept and use in accordance with the terms and conditions herein set forth, a minimum of thirty-five (35) 33,500 gallon approximate capacity, Class ICC--112A340W, tank cars.
2. Rental of the above cars will be \$245.00 per car per month with each month payable in advance of the first day of that month. Rental shall be paid to Lessor at Post Office Box 216, Katonah, New York, 10536. All mileage earned by the cars, as and when allowed to Lessor by the railroads, will be credited to Lessee.
3. The cars are to be delivered to Lessee at or about October 1, 1969; rental for each car will begin the day that car is billed to Lessee's designated point. Each car is to remain in service at least 120 months.
4. Each of the cars shall be subject to the Lessee's inspection, such inspection to be made within five days from delivery to Lessee on each car, before initial loading; and the loading of each such car shall constitute acceptance thereof by the Lessee hereunder, and shall be conclusive evidence of the fit and suitable condition of each car for the purpose of transporting the commodities then and thereafter loaded therein.
5. Lessor shall not be liable for any loss or damage to commodities loaded in its cars. Lessee shall not load any of the cars in excess of the load limit stencilled thereon. Lessee shall be liable for damage to any car covered by this agreement, whether or not due to Lessee's negligence, if caused by the commodity loaded therein. Lessee shall use said cars for the transportation of commodities which will not injure or damage the cars. Any car returned to Lessor must be in the same condition in which it was furnished, excepting for ordinary wear and tear. Lessee agrees to indemnify and hold Lessor harmless from and against any loss, liability, claim, damage, or expense arising out of or in connection with the use of the cars during the term of this agreement, except any loss, liability, claim, damage, or expense which is attributable to the negligence or omission of Lessor or for which a railroad or railroads have assumed full responsibility therefor.

6. Lessor agrees to maintain each of the cars in good condition and repair according to the code of rules of the Association of American Railroads, and is responsible for maintaining, repairing or modifying the cars covered by this lease in accordance with the requirements of the Association of American Railroads, the Interstate Commerce Commission, the Department of Transportation and other federal and state authorities having jurisdiction. No repairs to any of the cars shall be made by the Lessee for Lessor's account without prior consent of Lessor. If any of the cars shall become unfit for service, and shall be reported to Lessor as needing repair, then the car service charges covering each such car shall cease five days from date of such notification, and shall not resume until car is available for Lessee's service. Lessee shall, however, replace or reimburse Lessor for the cost of replacing any appliance or removable part if destroyed, damaged, lost, removed or stolen, unless the railroad or railroads have assumed full responsibility therefor or unless same results from the negligence or omission of Lessor.

7. Lessee shall be liable for any demurrage, track storage or detention charge imposed in connection with any car covered by this lease, as well as loss of or damage to any tank car while on any private siding or on any private or industrial railroad not subject to the A.A.R. rules of interchange.

8. Lessee agrees to furnish Lessor promptly with complete reports of the movements of the cars, including dates loaded and shipped, commodity, destination and full routing. Lessee agrees so to use the cars that their mileage under load shall be equal to their mileage empty upon each railroad over which the cars shall move. Lessee shall be liable for excess mileage payments only to the extent that it shall create an expense to the Lessor.

9. No title or property interest of any kind in any of the cars shall vest in Lessee or in Lessee's successors or assigns, by reason of this agreement or by reason of delivery to or use by the Lessee of such cars, except the right to use the cars upon the terms and conditions of this agreement. Lessee shall not mortgage, pledge or otherwise encumber any of the cars.

10. Lessee shall reserve the right to trip lease or otherwise lease this equipment from time to time as may be necessary to the profitable operation of its business, but shall in no way, thereby, be relieved of its responsibilities as set forth in this or other articles of this contract or addenda thereto.

11. Upon termination of the lease period for each car, Lessee agrees to return that car to Lessor at final unloading point or at other points as may be mutually agreeable to Lessor and Lessee, free from residue or to waive claim to any such residue removed. For cars returned not free from residue, Lessee shall, at its sole cost and expense, arrange for the necessary removal.

12. This lease will remain in effect for a period of at least ten (10) years, but in no case shall terminate prior to October 1, 1979. All full calendar month's rental will be calculated on the basis of \$245.00 per car per month with any partial month rental being in proportion thereto.

13. In the event that: (a) Lessee shall default in the payment of any installment of rent or in the observance or performance of any other covenant or agreement in this agreement and such default shall continue for a period of thirty (30) days after notice to Lessee from Lessor; or (b) Lessee shall dissolve or become insolvent (however evidenced) or make a general assignment for the benefit of creditors, or any proceeding under any bankruptcy or insolvency statute or any laws relating to the relief of debtors shall be commenced by or against the Lessee, or a receiver, trustee, or liquidator shall be appointed of the Lessee or of all or a substantial part of the Lessee's assets, or an order, judgment or decree shall be entered by a court of competent jurisdiction and such order, judgment or decree shall continue unpaid and in effect for any period of sixty (60) consecutive days without a stay of execution, or any execution or writ or process shall be issued under any action or proceeding against the Lessee whereby the equipment may be taken or restrained; then and in any such event, the Lessor may (1) immediately terminate this agreement and the Lessee's rights hereunder, and/or (2) proceed by appropriate court action or actions, either at law, or in equity, to enforce performance by Lessee of the applicable covenants of this agreement or to recover damages for the breach thereof, and/or (3) declare immediately due and payable all rental installments as liquidated damages and not as a penalty.

WITNESS

ESSEX INDUSTRIES, INC.

By James H. Robohn
James H. Robohn, LESSOR
President

WITNESS

SKELLY OIL COMPANY

By F. M. Holloway
F. M. Holloway, Traffic Manager LESSEE

OK Ted
6-19-69

ASSIGNMENT OF LEASE

KNOW THAT, ESSEX INDUSTRIES, INC., a New York corporation ("Assignor") in consideration of One (\$1.00) Dollar and other good and valuable consideration paid by TRANSERV SYSTEMS, INC., a Delaware corporation ("Assignee"), receipt of which is hereby acknowledged, hereby assigns unto the Assignee a certain Lease made by the Assignor with Skelly Oil Company dated May 2, 1969 (said Lease known as Essex Industries, Inc. Car Service Contract No. 123).

TO HAVE AND TO HOLD the same unto the Assignee, its successors and assigns from the 9th day of September, 1969 for the term of said Lease, subject to the rental, terms, covenants and conditions of said Lease.

The Assignee hereby assumes the performance of all the terms, covenants and conditions of the said Lease on the part of Lessor to be performed.

IN WITNESS WHEREOF, the Assignee has executed the above Assignment as of the 9th day of September, 1969.

ATTEST:



ESSEX INDUSTRIES, INC.

By 

ATTEST:



TRANSERV SYSTEMS, INC.

By 
